



The Solutions Network

Rochester, New York

A-76 Competitive Sourcing

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A-76: The Tough Questions



- DOD's Transition to New Rules
 - *What is the plan?*
- Post Award Accountability Requirements
 - *Has anyone thought about how this works?*
- Follow-on Competition for MEOs
 - *Should OFPP drop the requirement?*
- Protest Rights for MEO
 - *What should good legislation look like?*
- Proposed New A-76 Legislation
 - *How would DOD implement these provisions*
- Private Sector Competition
 - *Is it adequate?*

A-76: DOD's Transition to the New Rules



- **DOD granted exemptions to keep many competitions under old rules**
- **Recent delegation of authority letter**
- **Plan to conduct a small number (10-12) of studies under new rules this year**
- **Still plan to compete thousands of commercial FTEs over next several years**

A-76: Post Award Accountability Requirements



Regardless of the selected service provider, an agency shall:

- 1. Monitor performance**
- 2. Implement the QA plan**
- 3. Retain solicitation documentation**
- 4. Maintain currency of the contract file and letters of obligation**
- 5. Record the actual cost of performance**
- 6. Monitor, collect and report performance information"**

(Attachment B, Section E, Paragraph 4)

A-76: MEO Protest Rights



- Recommended by GAO Commercial Activities Panel
- Revised Circular treats MEO like a bidder
- GAO recently concluded that the MEO does not have protest rights under new rules
 - Not an interested party under CICA
 - No economic interest
- “Punted” the issue to Congress
 - Amend CICA
- Currently all bidders do not automatically qualify as an “Interested Party”

A-76: Follow-on Competition for MEO



- Agencies shall complete another competition of the activity by the end of the last performance period (unless a specific exemption is granted).
Attachment B Section E, Paragraph 5b.
- OFPP nominee David Safavian indicated he would not object to removing the re-competition provision

A-76: New Legislation?



- **Defense Bill provisions to be worked out in Conference Committee**
 - Protest rights to MEO
 - Requirement that private sector bidders gets no competitive advantage on health care benefits
 - A pilot project to all DoD employees to compete against contractors
- **Various appropriation bill provisions**

A-76: Adequate Competition?



- **Will the revised Circular increase private sector competition?**
- **Many companies refuse to bid A-76**
- **An 11% win rate is not encouraging**
- **Problems the Circular cannot fix**
 - Poorly drafted SOW or PWS
 - Insufficient workload data

Top Ten Ways to Discourage the Private Sector from Bidding



- 1. During oral presentations, don't ask any questions**
- 2. Stack the SSB with people whose jobs are at stake**
- 3. Make sure the base commander or agency director announces to the workforce that "We will win"**
- 4. Require a 40% or more subcontracting requirement for SB, SDB, WO, HBCU**
- 5. Require bidders to specifically identify key personnel, then delay the award decision for several months**
- 6. Put all financial risk of the project on the private sector**
- 7. Provide sketchy, incomplete or innacurate workload data, cost information, and facility diagrams**
- 8. On Industry Day, don't let the industry bidders off the bus**
- 9. Change the release date of the RFP at least 3 times**
- 10. Don't bother to issue draft RFPs**

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